RECENT DECISIONS

ALIMONY—REFUSAL TO PAY—CONTEMPT.—The plaintiff obtained a rule against the defendant to show cause why he should not be punished for contempt for refusing to pay alimony. The defendant had no property but was an able-bodied man and, if he had tried, could have easily earned money enough to pay the alimony awarded against him. *Held,* the defendant is guilty of contempt. *Fowler* v. *Fowler* (Okl.), 161 Pac. 227. See NOTES, p. 401.

ASSAULT—WHAT CONSTITUTES—CONDITIONAL OFFER OF VIOLENCE.—The defendant, with his walking cane on his arm and in a violent and abusive manner, presented a paper to the plaintiff and demanded that the plaintiff sign it, threatening to beat him if his demand was not complied with. The plaintiff signed to escape injury. *Held,* such acts constitute an assault. *Trogden* v. *Terry* (N. C.), 90 S. E. 583.

An assault is an attempt, with unlawful force, to inflict bodily injury upon another, accompanied with the present ability to give effect to the attempt if not prevented. COOLEY, TORTS, 149. The injury attempted must be corporal injury. *Patterson* v. *Pillans,* 43 App. Cas. D. C. 505. For this reason, mere words, however abusive, do not constitute an assault. *Kramer* v. *Ricksmeier,* 159 Iowa 48, 139 N. W. 1091, 45 L. R. A. (N. S.) 928; *Hixson* v. *Slocum,* 156 Ky. 487, 161 S. W. 522, 51 L. R. A. (N. S.) 838. See *Prince* v *Ridge,* 32 Misc. Rep. 666, 66 N. Y. Supp. 454. But where abusive words are accompanied by a threat of immediate violence, the latter constitutes an assault, without regard to the words. *Bishop* v. *Ranney,* 59 Vt. 316, 7 Atl. 820. The force threatened must be unlawful, else there is no liability. See *Chase* v. *Watson,* 75 Vt. 385, 56 Atl. 10; *Carter* v. *Sutherland,* 52 Mich. 547, 18 N. W. 375. But if the force offered is excessive, though lawful, the defendant is liable. See *Chase* v. *Watson, supra; Carter* v. *Sutherland, supra.* An offer of lawful force does not justify the one first assailed in returning the assault. *Saunders* v. *Gilbert,* 156 N. C. 463, 72 S. E. 610, 38 L. R. A. (N. S.) 404; *Drew* v. *Comstock,* 57 Mich. 176, 23 N. W. 721.

For civil liability, it is not necessary that the assailant actually intend to inflict the threatened injury; it is sufficient if he has the apparent intent to do so. *McGlone* v. *Hauger,* 56 Ind. App. 243, 104 N. E. 116; *Howell* v. *Winters,* 58 Wash. 436, 108 Pac. 1077. But see *Degenhardt* v. *Heller,* 93 Wis. 662, 68 N. W. 411, 57 Am. St. Rep. 945. If, however, the threat is accompanied by words which clearly show the absence of any intent to do harm, it is not an assault. *Tuberville* v. *Savage,* 1 Mod. 3. It is not necessary that the assailant have actual ability to execute the threat, the test being whether the person assailed had reasonable belief that the ability was present. *Beach* v. *Hancock,* 27 N. H. 223, 59 Am. Dec. 373. See *Kline* v. *Kline,* 158 Ind. 602, 64 N. E. 9, 58 L. R. A. 397. For this reason, the pointing of an unloaded firearm at another, not known to the other to be unloaded, is an assault. *Beach* v. *Hancock, supra.*

Usually, the offer of violence is unconditional; but, even when conditional, it is an assault if, as in the instant case, the condition is one which the assailant has no right to impose. *Kline* v. *Kline, supra.* On the other hand, if the threat is accompanied by a lawful condition, as, for example, that the plaintiff cease a trespass on the assailant's property, there is no liability. *Carter* v. *Sutherland, supra.*

BANKRUPTCY—EFFECT OF DISCHARGE—WILLFUL AND MALICIOUS INJURY.—A firm of brokers sold, without the authority or knowledge of the owner, certain certificates of stock which they were holding as collateral for their debt, and appropriated the avails to their own use. Later both the firm and the members were adjudged bankrupts and discharged. Suit was brought by the owner, after discharge against one of the bankrupt members, seeking damages for the wrongful conversion of the stock. The bankrupt pleaded his discharge. *Held,* plaintiff can recover. *McIntyre* v. *Kavanaugh,* 37 Sup. Ct. Rep. 38.

It is a fundamental rule of the law of bankruptcy that a discharge releases the bankrupt from all his debts and liabilities which are provable against his estate, except those which are expressly excepted from the operation of a discharge. *Williams* v. *U. S. Fidelity, etc., Co.,* 236 U. S. 549, 34 A. B. R. 181; *Ford* v. *Blackshear Mfg. Co.,* 140 Ga. 670, 79 S. E. 576. See *Ruhl-Koblegard Co.* v. *Gillespie,* 61 W. Va. 584, 56 S. E. 898, 22 A. B. R. 643, 10 L. R. A. (N. S.) 305, 11 Ann. Cas. 929. And it is universally held, as a general rule, that unliquidated claims for damages arising *ex delicto* are not provable, and hence not dischargeable, in bankruptcy. *Brown* v. *United Button Co.,* 79 C. C. A. 70, 149 Fed. 48, 8 L. R. A. (N. S.) 961, 9 Ann. Cas. 445; *Weisfield* v. *Beale,* 231 Pa. 39, 79 Atl. 878. See *Winfree* v. *Jones,* 104 Va. 39, 51 S. E. 153, 1 L. R. A. (N. S.), 201.

The Bankruptcy Act expressly provides, in section 17, that the liabilities of the bankrupt founded upon his willful and malicious injury to the person or property of another shall remain unaffected by his discharge. *Peters* v. *United States,* 101 C. C. A. 99, 177 Fed. 885, 24 A. B. R. 206; *McChristal* v. *Clisbee,* 190 Mass. 120, 76 N. E. 511, 3 L. R. A. (N. S.) 702, 5 Ann. Cas. 769, 16 A. B. R. 838. See *Tinker* v. *Colwell,* 193 U. S. 473, 11 A. B. R. 568. Prior to the amendment of 1903 to this section, a claim against the bankrupt for a willful and malicious injury to the person or property must have been reduced to a judgment, or else he would have been released from such liability by his discharge. See *Woehrle* v. *Cancline,* 158 Cal. 107, 109 Pac. 888. But this amendment, substituting for the words "judgments in actions" the word "liabilities," did not have the effect of merging the original cause of action into the judgment so as to remove the liability from the excepted class. Under the act as amended a liability for a willful and malicious injury includes a judgment predicated on such cause of action. *Thompson* v. *Judy,* 95 C. C. A. 51, 169 Fed. 553, 22 A. B. R. 154; *Peters* v. *United States, supra.*

The term "willful" used in the Bankruptcy Act, providing that a bankrupt shall not be released by discharge from his liabilities based on his willful and malicious injury to person or property, means nothing more than intentional; while the term "malicious," as used in this connection,